

IN THE IOWA DISTRICT COURT FOR OSCEOLA COUNTY

■, by and through his mother, ■ and
■, individually,
Plaintiffs,

vs.

**SIBLEY-OCHEYEDAN COMMUNITY
SCHOOL DISTRICT; MEDIAPOLIS
COMMUNITY SCHOOL DISTRICT; and
SIOUX CITY COMMUNITY SCHOOL
DISTRICT,**

Defendants.

CASE NO. LACV020030

**PLAINTIFF'S SUPPLEMENTAL
STATEMENT OF FACTS IN
RESISTANCE TO SIOUX CITY
COMMUNITY SCHOOL DISTRICT'S
AND MEDIAPOLIS COMMUNITY
SCHOOL DISTRICT'S MOTION FOR
SUMMARY JUDGMENT**

COME NOW, Plaintiffs, ■ and ■, by and through the undersigned counsel, and hereby state the following in support of their resistance to Sioux City Community School District's ("SCCSD") and Mediapolis Community School District's ("MCSD") Motions for Summary Judgment:

RESPONSE TO SCCSD'S FACTS

- a. Two of Kyle Ewinger's co-employees wrote letters of recommendation for him when he left the employ of SCCSD, (Appendix, pp. 1-6);

RESPONSE: Admit

- b. Neither of these co-employees sought permission from SCCSD before writing these letters, (Appendix, pp. 1-6);

RESPONSE: Admitted, however would also note that according to SCCSD's Human Resources director that permission was not necessary and that the employee's had a "professional responsibility" to send the letters. (CA APP 59-60) (Vannatta P. 21-22)

- c. There is no evidence in the record that anyone in the administration at SCCSD was aware that Ewinger's co-employees wrote these letters;

RESPONSE: Admitted, however would also note that according to SCCSD's Human Resources director that permission was not necessary and that the employee's had a "professional responsibility" to send the letters. (CA APP 59-60) (Vannatta P. 21-22)

- d. Neither co-employee was acting on behalf of SCCSD when these letters were written (Appendix, pp. 1-6);

RESPONSE: Deny, they were acting within the scope of their authority as employees of the school district.

- e. SCCSD had no input into the content of these letters; and

RESPONSE: Admitted, however would also note that according to SCCSD's Human Resources director that permission was not necessary and that the employee's had a "professional responsibility" to send the letters. (CA APP 59-60) (Vannatta P. 21-22)

- f. There is no evidence in the record that SCCSD knew/knows how the letters were used by Ewinger, or where they were sent.

RESPONSE: Admitted, however would also note that according to SCCSD's Human Resources director that permission was not necessary and that the employee's had a "professional responsibility" to send the letters. (CA APP 59-60) (Vannatta P. 21-22)

RESPONSE TO MCSD'S FACTS

1. Kyle Ewinger was employed by MCSD from approximately August 20, 2000 to on or about November 30, 2004. (App. 1-4)

RESPONSE: Admit

2. On September 27, 2004 Ewinger was suspended with pay, "pending investigation of possible inappropriate and unprofessional conduct." (App. 5.)

RESPONSE: Admit

3. On November 30, 2004 Ewinger resigned his employment “based upon concerns the District has regarding Ewinger’s performance and conduct as a teacher... and settle issues without the necessity of litigation pursuant to Chapter 279 of the Code of Iowa”.
(App. 6-12)

RESPONSE: Admit

4. As partial consideration for Ewinger’s resignation the MCSD agreed:

The District’s Superintendent will provide Ewinger a neutral, non-negative letter that he may present to prospective employers. The letter will not include any untruthful or misleading statements. [emphasis added]
(App.12)

RESPONSE: Admit

5. A true and correct copy of the letter referred to in Item 3 of the agreement and referenced in paragraph four (4) above is set forth on page 15 and page 18 of the Appendix.

RESPONSE: Admit

6. There is no evidence that Kyle Ewinger provided the letter dated November 1, 2004 to any future or prospective employer. (App. 35)

RESPONSE: Admitted, based on the current limited record.

7. There is no evidence that Kyle Ewinger provided the letter dated November 1, 2004 to any person at Sibley-Ocheyedon Community School District prior to his employment by it. (App. 17-24)

RESPONSE: Admit

8. There is no evidence that Sibley-Ocheyedon Community School District or its’ agents communicated with MCSD concerning Kyle Ewinger prior to hiring Kyle Ewinger.
(App.17-27; p.31)

RESPONSE: Admit.

PLAINTIFF'S STATEMENT OF ADDITIONAL MATERIAL FACTS

1. Kyle Ewinger was employed at SCCSD from 2007-2012. (CA APP - 008).
2. In 2010, while Ewinger was employed at SCCSD, Ewinger was alleged to have placed a pill in the ice cream of a student and the student reported hallucinating. (CA APP-003)
3. Ewinger was investigated by the Sioux City Police Department and Iowa Department of Human Services based upon these allegations. (CA APP-003-004)
4. Iowa Department of Human Services requested SCCSD to remove the child from Ewinger's classroom "until this issue was resolved." (CA APP-004)
5. Ewinger was eventually interviewed at one of SCCSD's Elementary schools. (CA APP-004)
6. Ewinger was interviewed in the office of SCCSD principal Doug Robbins. (CA APP 40)(Ameen P. 16)
7. SCCSD principal Doug Robbins was present for at least part of the interview and was informed of the reasons for the investigation. (CA APP 40)(Ameen P. 16)
8. SCCSD principal Doug Robbins was informed by Iowa Department of Human Resources employee Robert Ameen to "keep an eye on [Ewinger]." (CA APP 41-42)(Ameen P. 17-18).
9. Ewinger admitted to being alone with the child and admitted that the child was led to believe a pill was placed in his ice cream to help him sleep. (CA APP-005-006)
10. Upon learning this information it was expected that Doug Robbins would have reported this information to SCCSD's Human Resources department. (CA APP 34)(Robbins P. 43-45). (CA APP 60-61)(Vannatta P. 27-29)
11. Ewinger left SCCSD in 2012. (CA APP-008).

12. In February 2013, Ewinger applied to SOCSD. (CA APP-010)
13. Ewinger's application was reviewed by SOCSD's employees, including middle school principal Michael Morran. (CA APP-025-028)
14. Mr. Morran called several individuals from Ewinger's prior employers Amy Gilbert (a principle at SCCSD), Dale Veatch (an athletic director at SCCSD) and the director of Human Resources at SCCSD. (CA APP-025-028)
15. No one from SCCSD informed Mr. Morran or anyone at SOCSD of the investigation from 2010 involving one of Ewinger's students. (CA APP-025-028)
16. If Mr. Morran would have learned of this information, he never would have recommended that Ewinger be hired at SOCSD. (CA APP-025-029)
17. SOCSD superintendent, Thomas Becker was also unaware of the investigation during Ewinger's employment at SCCSD and if he had been aware, he never would have recommended Ewinger be hired at SCCSD. (CA APP-022)
18. During Ewinger's employment at MCSD, Ewinger was alleged to have been caught humping the leg of a MCSD student after a night of babysitting the boy and his brothers. (CA APP-016)
19. As a result, MCSD placed Ewinger on a paid suspension pending an investigation. (CA APP-014)
20. During Ewinger's employment at MCSD, it was learned by MCSD that Ewinger engaged in inappropriate behavior which included "allow[ing] boys to sit on his lap as a reward," "allow[ing] kids to give neck and shoulder rubs and sit on his lap," having "kids overnight and he would sleep on the floor with them," "reports of inappropriate conduct with boys in the public swimming pool such as sucking on their toes," and reports of

Ewinger throwing kids “around and sometimes would get into their private areas.” (CA APP-018-020).

21. As a result of the investigation at MCSD, MCSD and Ewinger entered into an agreement whereby Ewinger would tender his resignation and in exchange, MCSD would agree to not report Ewinger to the Iowa Board of Educational Examiners, MCSD would not disclose Ewinger’s conduct to future employers, and MCSD would agree to provide a neutral letter of recommendation. (CA APP-015)
22. School officials at Akron-Westfield Community School District contacted MCSD after hiring Ewinger to investigate rumors of Ewinger’s conduct while at MCSD.
23. Because MCSD had an agreement not to disclose Ewinger’s humping incident, MCSD officials who were interviewed by AWCSD officials did not disclose the humping incident. (CA APP 18-20, Akron-Westfield Investigation Notes).
24. Mr. Morran contacted AWCSD before hiring Ewinger inquiring into Ewinger’s background and would not have hired Ewinger had AWCSD known about Ewinger’s humping incident and informed him of it during the background check. (CA APP 26-28, Morran Deposition 27:14-19, 33:21-34:8, 36:20-37:5).
25. MCSD and MCSD superintendent were required to report Ewinger’s resignation and the allegations to the Iowa Board of Educational Examiners. Iowa Code § 272.15 (2003).
26. While Mr. Morran was calling Ewinger’s references to determine if SOCSD would hire Ewinger, Mr. Morran also called the Iowa Board of Educational Examiners. (CA APP-028-029)

27. Because MCSD never reported any incident to the Iowa Board of Educational Examiners, the Iowa Board of Educational Examiners did not report any findings on Ewinger's record or licensure. (CA APP-028-029)
28. Had this information been reported to proper authorities, Ewinger would have probably been out of public education and he would not have been allowed to teach at Akron Westfield Community School District, SCCSD or SOCSD. (CA APP 60-61)(Vannatta P. 27-29)
29. Mr. Morran would not have hired Ewinger if anything came back on his record from the Iowa Board of Educational Examiners search. (CA APP-028-029).
30. Plaintiffs expert witness is Dr. David Else.
31. A summary of Dr. Else's educational and professional credentials is provided in CA APP 78-104.
32. Dr. Else opines MCSD breached the standard of care in several ways, including by entering into an agreement with Ewinger in which MCSD agreed to conceal Ewinger's conduct, not report Ewinger to the Iowa Board of Educational Examiners, and prepare a neutral letter of recommendation that likely attracted future employers to hire Ewinger. (CA APP 72-77, Affidavit of David Else, Ph.D.).
33. Dr. Else further opines that MCSD's breach of the standard of care was a cause of damage to C.A. (CA APP 72-77, Affidavit of David Else, Ph.D.).

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause and to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on October 19, 2018.

By: U.S. Mail FAX
 Hand Delivered Overnight Courier
 Certified Mail X Other: EDMS

Signature /s/ Scott M. Wadding